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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 14 OF 2014

Aam Aadami Lokmanch. .. Petitioner
Vs
The State of Maharashtra .. Respondents

Mr.P.P.Goyal, Petitioner in person.
Mr.B.B.Sharma – Special Counsel a/w Ms.S.S.Bhende-AGP, for Respondent-State.

CORAM : DR.MANJULA CHELLUR, CJ. &
N.M.JAMDAR, J.

DATE : AUGUST 24, 2017.

P.C.:

The Petitioner is before this Court mainly challenging the State enactment for collection of taxes under Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with the Maharashtra Tax Laws (Levy, Amendment, Repeal) Act, 1989. Consequentially they have also sought for a declaration that the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, as unconstitutional and invalid.

2. The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 was meant for funding the

Maharashtra State Employment Guarantee Scheme of 1977, which came to be amended and continued till date. According to the Petitioner from the year 2005, Central Government has enacted the Mahatma Gandhi Rural Employment Guarantee Act, 2005 to provide employment to the rural unskilled and that there is no need to collect tax by the State under the State Maharashtra State Tax on Professions, Trades, Callings and Employments Act, of 1975. On early occasion, the Petitioner came up with another public interest litigation in PIL No.32 of 2016 wherein he sought the relief of repeal of Maharashtra Employment Guarantee Scheme of 1977, in the light of Mahatma Gandhi Rural Employment Guarantee Act, 2005 by Union of India. At the time of considering the said PIL, it was not brought to our notice the amendment brought to the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 i.e. so far as the preamble. By virtue of amendment brought in the year Amendment 2008, the purpose for which the tax under the guarantee scheme of the State Government came to be deleted and re-amended, the preamble read as under and amended preamble now reads as under -

'Amendments to the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975.

11. In the preamble of the Maharashtra State Tax on Professions, Trades, Ceilings and Employments Act, 1975 (hereinafter, in this Chapter, referred to as "the Tax on Professions Act") the words for raising additional resources needed for *implementing the Employment Guarantee Scheme of the State Government and to provide for establishment of the Employment Guarantee Fund" shall be deleted.*

12. For section 30 of the Tax on Professions Act, the following section shall be substituted, namely :-

"30. The proceeds of the tax levied and collected under this Act, together with penalties and interest and fees recovered thereunder, shall first be credited to the Consolidated Fund of the State, and after deducting the expenses of collection and recovery as determined by the State Government and the amounts of grants made to the local authorities under section 29, out of the remaining amount, the amount necessary to ensure that, at the beginning of every Financial Year, the amount standing to the credit of the Fund established under the Maharashtra Employment Guarantee Act, 1977, is not less than Rupees 2,000 crore, shall, under appropriation duly made by law in this behalf, be entered into, and transferred to, the Fund established under that Act".

3. In the earlier PIL we opined that if the population of the State is benefited under two welfare legislations, one under the Maharashtra Employment Guarantee Act of 1975 and another under Mahatma Gandhi Rural Employment Guarantee Act, 2005 of Union of India why we should deprive the public to have the benefit of two enactments. Indirectly, the Petitioner in both the petitions is striving at the fact that if there are two schemes for Employment Guarantee i.e. benefit to the unemployed rural population it should be only one

and not two. This is aimed at ultimately to challenge the collection of the tax and not the fact of extending the benefit. The petition came to be filed on earlier occasion without reference to the amendment to the preamble which clearly indicated that raising additional sources needed for implementing the Employment Guarantee Scheme of the State. With the amendment brought to the preamble, now there is no link between the collection of the tax and the purpose for which earlier it was used i.e. Employment Guarantee Scheme of the State of Maharashtra. In the light of such severance in the link between the collection of the tax and the purpose for which it was collected till the amendment came into existence, we are of the opinion how the tax collected is appropriated to the consolidated fund. Hence by virtue of the amendment, the tax collected under the above Act is credited to the consolidated fund of the State and the State is at liberty to use the entire consolidated fund for various obligations to be discharged by the State, for the benefit of the people of the State. Under these circumstances we are of the opinion, the challenge now raised cannot be appreciated and accordingly, the petition is dismissed.

(N.M.JAMDAR, J.) *CHIEF JUSTICE*